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11 Attorneys for Defendant, RBE Construction, Inc., et al.

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 DISTRICT COUNCIL 16 NORTHERN
CALIFORNIA HEALTH AND WELFARE
16 TRUST FUND, et al.,

17 Plaintiffs,

18 v.

19 RBE CONSTRUCTION INC., a California
corporation, doing business as SLINGSHOT
20 DRYWALL,
21 Defendant.

Case No. 4:17-cv-03327-HSG

**JOINT REQUEST TO EXTEND
MEDIATION COMPLETION DEADLINE
BY 60 DAYS; ORDER**

22 Plaintiffs and Defendant RBE Construction, Inc. dba Slingshot Drywall, by and through their
23 respective counsel of record, hereby respectfully request to extend the deadline to hold the mediation
24 session by 60 days. Good cause exists for the continuance, as follows:

25 1. On October 26, 2017, the Court ordered the Parties to participate in mediation within the
26 presumptive deadline of ninety days, (Dkt. No. 24), as stipulated. The deadline for the Parties to
27 participate in mediation was January 24, 2018.

1 2. On November 13, 2017, the Court issued a Notice of Appointment of Mediator James H.
2 Fleming (Dkt. No. 25).

3 3. The Parties participated in a pre-mediation phone conference on November 29, 2017 with
4 Mr. Fleming, and scheduled a mediation hearing for January 22, 2018.

5 4. In late December 2017, Defendant provided documents necessary to complete the
6 pending audit to Plaintiffs' auditor, Lindquist, LLP ("Lindquist").

7 5. Lindquist initially advised Plaintiffs' counsel that a draft audit report would be completed
8 in early February.

9 6. On January 28, 2018, the Parties submitted a joint request to extend the mediation
10 completion deadline by 60 days. The Court granted that request and extended the mediation completion
11 deadline to March 23, 2018 (Dkt. No. 29).

12 7. Plaintiffs' auditor Lindquist was unable to complete the draft audit in the timeframe
13 initially estimated due to the number of documents reflecting work performed over a period of two
14 years. The draft audit was not completed until March 7, 2018. On March 12, 2018, the Court granted
15 a request to extend the mediation completion deadline to June 10, 2018 (Dkt. No. 31). The Court has
16 subsequently granted further extensions (Dkt. No. 34, Dkt. No. 37, and Dkt. No. 39) through
17 November 19, 2018.

18 8. Defendant has been working to review the audit and respond to the specific findings.
19 Plaintiffs have been cooperative in informally providing additional information requested by Defendant.
20 Because the period at issue spans over 18 months and multiple projects, it has taken longer than
21 anticipated for Defendant to review and respond to the audit. Defendant RBE has a new bookkeeper and
22 requires additional time to respond to the audit. The Parties continue to informally exchange documents
23 to ensure each side has full access to materials needed to reconcile Defendant's disagreement over the
24 audit findings.

25 9. The Parties believe that mediation will be most effective once the Plaintiffs and
26 Defendant have had the chance to complete the audit dispute process leaving the only remaining issue to
27 mediate being the amounts owed to Plaintiffs.

1 10. Counsel has discussed the current status of the matter with Mr. Fleming, the appointed
2 mediator. He is unable to continue acting as mediator if the Defendant cannot commit to completing its
3 review of additional documents before December 19, 2018. Defendant believes an in-person meeting
4 with its staff and Plaintiffs' auditor may be necessary to resolve the audit dispute. Defendant cannot
5 complete its review of documents and meet to discuss resolution of the audit dispute in sufficient time to
6 schedule a mediation session before December 19, 2018. Therefore, a new mediator will have to be
7 selected.

8 11. The Parties request that the Court extend the November 19, 2018 deadline to hold the
9 mediation session by 60 days (January 18, 2019) to allow the Parties to complete the audit dispute
10 process prior to mediating. The Parties further request that the matter be referred back to the Court's
11 ADR department for the appointment of a new mediator.

12 DATED: November 15, 2018

**SALTZMAN & JOHNSON LAW
CORPORATION**

13
14 By: /s/ Matthew P. Minser
15 Matthew P. Minser
16 Attorneys for Plaintiffs, District Council 16
Nor. Cal. Health and Welfare Trust Fund, et al.

17 DATED: November 15, 2018

SQUIRE PATTON BOGGS (US) LLP

18
19 By: /s/ Wallace E. Smith
20 Wallace E. Smith
21 Attorneys for Defendant, RBE Construction, Inc.,
et al.

22 **CERTIFICATION RE: SIGNATURES**

23 I attest that concurrence in the filing has been obtained from the other Signatory.

24 DATED: November 15, 2018

25
26 By: /s/ Wallace E. Smith
27 Wallace E. Smith
28

ORDER

IT IS SO ORDERED.

The deadline to hold the mediation session is extended by 60 days to January 18, 2019. The matter shall be referred back to the ADR department for appointment of a new mediator for this matter.

DATED: November 19, 2018


UNITED STATES DISTRICT COURT JUDGE